

ORDINANCE NO. 10-15

ORDINANCE GRANTING A VARIANCE PERMIT EXTENDING A LEGAL NONCONFORMING USE PURSUANT TO HIALEAH CODE §98-377(b) AND GRANTING A SPECIAL USE PERMIT (SUP) TO ALLOW THE RECYCLING OF CONSTRUCTION AND DEMOLITION DEBRIS PURSUANT TO HIALEAH CODE §98-1452. **PROPERTY LOCATED AT 5000 N.W. 37 AVENUE, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of January 27, 2010, recommended approval of this ordinance; and

WHEREAS, the Petitioner proffers to make repairs to the perimeter wall along Southeast 4th Avenue and provide the minimum required pervious area, to which the City accepts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The below-described property is hereby granted a variance permit to extend a legal nonconforming use and is hereby granted a special use permit (SUP) to allow the recycling of construction and demolition debris pursuant to Hialeah Code §98-1452. Property located at 5000 N.W. 37 Avenue, Hialeah, Miami-Dade County, Florida, zone M-1 (Industrial) and legally described as follows:

THE SOUTH ½ OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 20, TOWNSHIP 53 SOUTH, RANGE 41 EAST, LYING EAST OF LANDS CONVEYED TO SEABOARD AIRLINE RAILROAD BY DEEDS FILED IN DEED BOOK 3819, AT PAGE 222 AND DEED BOOK 905, PAGE 258, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, LESS THE EAST 35 FEET THEREOF, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SAID SECTION 20; THENCE SOUTH $87^{\circ}50'24''$ WEAST ALONG THE SOUTH LINE OF SAID SOUTHEAST $\frac{1}{4}$ OF THE NOTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ FOR 35 FEET TO THE POINT OF BEGINNING; THENCE NORTH $02^{\circ}15'31''$ WEST ALONG A LINE PARALLEL WITH AND 35 FEET WEST OF THE EAST LINE OF SAID SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$, SAID LINE ALSO BEING THE WESTERLY RIGHT-OF-WAY LINE OF S.E. 12 AVENUE, FOR 337.57 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH $\frac{1}{2}$ OF SAID SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$; THENCE SOUTH $87^{\circ}48'30''$ WEST ALONG SAID NORTH LINE OF THE SOUTH $\frac{1}{2}$ OF THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ FOR 573.39 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF THE C.S.X. RAILROAD AS PER DEED 3819, AT PAGE 222 AND DEED BOOK 905, AT PAGE 258 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; THE FOLLOWING TWO COURSES BEING ALONG SAID EASTERLY RAILROAD RIGHT-OF-WAY LINE (1) THENCE SOUTH $02^{\circ}52'11''$ WEST FOR 100.39 FEET; (2) THENCE SOUTH $01^{\circ}42'03''$ EAST FOR 237.26 FEET TO A POINT ON THE SOUTH LINE OF SAID SOUTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$; THENCE NORTH $87^{\circ}50'24''$ EAST ALONG SAID SOUTH LINE OF THE SOUTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ FOR 584.67 FEET TO THE POINT OF BEGINNING. ALL OF THE ABOVE LYING AND BEING IN THE CITY OF HIALEAH, MIAMI-DADE COUNTY, FLORIDA.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Additional Penalties upon Violation of the Conditions of Use and/or Declaration of Restrictive Covenants.

Any change of the terms and conditions of the use identified in this ordinance and as provided in the Declaration of Restrictive Covenants, will cause a revocation of the Special Use Permit and of the city occupational license issued in connection herewith and the property shall revert to the zoning classification without the benefit of the special use and associated variances.

Section 6: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 7: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 23rd day of February, 2010.

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING


Carlos Hernandez
Council President

Attest:

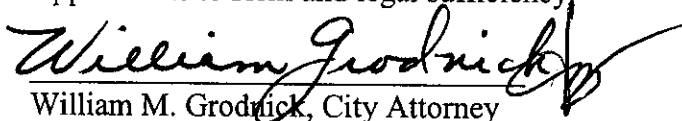
Approved on this _____ day of _____, 2010.

MAYOR'S SIGNATURE WITHHELD

Rafael E. Granado, City Clerk

Mayor Julio Robaina

Approved as to form and legal sufficiency:


William M. Grodnick, City Attorney

Ordinance was passed and adopted by the Hialeah City Council on February 23, 2010 and became effective March 9, 2010 without Mayor's signature.

Prepared by and return to:
City of Hialeah
Planning Division
501 Palm Avenue, Second Floor
Hialeah, FL 33010

**DECLARATION OF RESTRICTIVE COVENANTS
(Corporate)**

(I) (WE), WASTE MANAGEMENT INC. OF FLORIDA, a Florida corporation

Being the tenant of lands described herein: See "Exhibit A" attached hereto and made a part hereof.

Property located at: 5000 N.W. 37th Avenue, Miami, FL 33142

The street property address is: As above.

The folio number is **04-3120-000-0070**

make the following Declaration of Restrictive Covenants covering and running with the above property, specifying that this restriction during its lifetime shall be for the benefit of and a limitation upon all present and future owners of the real property described above, in favor of and enforceable by the City of Hialeah, Florida.

In connection therewith, the undersigned covenants, represents and agrees as follows:

1. That the currently-permitted maximum daily tonnage of materials received at the facility known as Delta Recycling Hialeah, located at the above address, may not exceed 1,500 tons, under permit issued by the Florida Department of Environmental Protection, and, should the undersigned wish to increase the permitted daily tonnage in excess of 1,500 tons per day, it shall present its request to the City of Hialeah in accordance with the requirements of Paragraph 2, below.
2. This covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the above-described property and shall constitute a covenant running with the land and may be recorded in the Public Records of Miami-Dade County, Florida. This covenant shall remain in full force and effect and shall be binding upon the undersigned, its (their) heirs, successors and assigns until such time as the same is modified, amended or released and may only be modified, amended or released by a written instrument executed by the then owner having fee simple title to the property affected or to be affected by such modification, amendment, or release; provided, however, the same is also approved by the City Council and the Mayor of the City of Hialeah, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in Hialeah Charter.
3. Where construction has occurred on said property described herein, pursuant to a permit issued by the City of Hialeah, and inspection made and approval of occupancy given by the City, the same shall create a conclusive presumption that the improvements thus constructed comply with the intent and spirit of the restrictions referenced herein and this Declaration of Restrictive Covenants shall not be construed as clouding title of any of said property on which such development has occurred.

DECLARATION OF RESTRICTIVE COVENANTS
(Corporate)

IN WITNESS WHEREOF, We have hereunto set out hands and seals at Pompano Beach, Florida
this 19TH day of February, 2010.

Attest: [Signature]
Assistant Secretary: RONALD M. KAPLAN
Typed/Printed Name

Name of Corporation: WASTE MANAGEMENT
INC. OF FLORIDA

Signed, sealed and delivered in the
presence of:

[Signature]
Witness CHRISTA JOHNSON
Typed/Printed Name:

[Signature]
Witness
Typed/Printed Name: Jennifer Scamacca

By:

[Signature]
Vice President
TIMOTHY B. HAWKINS
Typed/Printed Name

Corporate Seal

STATE
OF Florida
COUNTY
OF Broward

The foregoing instrument was acknowledged before me on this 19TH OF FEBRUARY, 2010
by TIMOTHY B. HAWKINS as President, and RONALD M. KAPLAN Secretary, of
(Name of Officer or Agent) VICE (Name of Secretary) ASSISTANT

WASTE MANAGEMENT INC. OF FLORIDA
(Name of Corporation)

a Florida corporation.
(State or Place of Incorporation)


They are personally known to me or have produced the following
as identification, did take an oath, and attested to the truth and accuracy of the representations contained
herein.

This document was prepared by: City of Hialeah, Florida

Name

Street

City State Zip Code

[Signature]
Signature of Notary Public
 SUSAN CHRISTA JOHNSON
MY COMMISSION # DD 949140
EXPIRES: January 29, 2014
Bonded Thru Budget Notary Services

Name of notary typed, printed, or stamped
Commission Number:

Folio Number: 04-3120-000-0070

Site Address: 5000 NW 37th Avenue
Hialeah, Florida 33142

LEGAL DESCRIPTION:

The South 1/2 of the Southeast 1/4 of the Northeast 1/4 of the Northeast 1/4 of Section 20, Township 53 South, Range 41 East, lying East of lands conveyed to Seaboard Airline Railroad by Deeds filed in Deed Book 3819, at Page 222 and Deed Book 905, Page 258, of the Public Records of Dade County, Florida, LESS the East 35.00 feet thereof, being more particularly described as follows:

Commence at the Southeast corner of the Southeast 1/4 of the Northeast 1/4 of the Northeast 1/4 of said Section 20; thence S.87°50'24"W. along the South line of said Southeast 1/4 of the Northeast 1/4 of the Northeast 1/4 for 35.00 feet to the Point of Beginning; thence N.02°15'31"W. along a line parallel with and 35.00 feet West of the East line of said Southeast 1/4 of the Northeast 1/4 of the Northeast 1/4, said line also being the Westerly right-of-way line of S.E. 12th. Avenue, for 337.57 feet to a point on the North line of the South 1/2 of said Southeast 1/4 of the Northeast 1/4 of the Northeast 1/4; thence S.87°48'30"W. along said North line of the South 1/2 of the Northeast 1/4 of the Northeast 1/4 for 573.39 feet to a point on the Easterly right-of-way line of the C.S.X. Railroad as per Deed Book 3819, at Page 222 and Deed Book 905, at Page 258 of the Public Records of Dade County, Florida; the following two courses being along said Easterly Railroad right-of-way line (1) thence S.02°52'11"W. for 100.39 feet; (2) thence S.01°42'03"E. for 237.26 feet to a point on the South line of said South 1/2 of the Southeast 1/4 of the Northeast 1/4 of the Northeast 1/4; thence N.87°50'24"E. along said South line of the South 1/2 of the Southeast 1/4 of the Northeast 1/4 of the Northeast 1/4 for 584.67 feet to the Point of Beginning.

All of the above lying and being in the City of Hialeah, Miami-Dade County, Florida.

Exhibit A